

From: "Roxanne McCain" <Roxanne.McCain@yesbank.com> on 04/20/2004 09:02:10 PM
Subject: Economic Growth and Regulatory Paperwork Reduction Act of 1996 Review

Dual Charters: Commerce Bank, NA (National bank), and Commerce Bank, North (State Nonmember bank)

Bank Size: \$23 billion in assets, 275 store (branch) locations. Markets: NJ, NY, Pa, DE

Subject to regulations and enforcement by the OCC and the FDIC.

Consumer Protection in banking is an ongoing challenge for lending institutions and compliance professionals. We strive to deliver the requirements to our customers while nurturing an environment in which to cultivate business. We welcome any reduction in the regulatory burden realized by submission of these comments.

Consumer Protection: Lending ? Related Rules

The fair lending regulations (FHA, ECOA, HMDA) share common requirements for collection of monitoring information from loans made for the purposes of home purchase, refinance, and home improvement, secured by improved real property. The minor deviations (collect for purchase & refinance only or collect for purchase, refinance and home improvement) between these housing ? related regulations cause the ever - increasing challenge of overlapping requirements. An added challenge for the national bank is collecting monitoring data for credit lines when the reporting of credit line data remains optional under HMDA. The purposes shared by these laws are to protect the borrower from unfair/unequal treatment in dwelling ?related loans, and to monitor and report the lending performance of the lending institution.

Consistency and Redundancy. The FHA and the ECOA require a national bank to collect and store specific applicant information and government monitoring data (race and sex) from its home purchase and refinance applications. The laws require data to be collected and maintained as part of the loan file, yet submission of this data to the regulating agency is not required.

• One option to ease the compliance burden while maintaining the intent of the laws is to expand the Equal Credit Opportunity Act to include the provisions of the Fair Housing Act. Currently, these two laws share five of the prohibited basis categories. This merged regulation will provide necessary tools for lenders to conduct all aspects of the credit application process: permissible inquiries to applicants, acceptable applicant data, provisions against unfair/unequal treatment, the anti-redlining provisions, right to appraisal, advertising requirements, proper poster display, etc. Remove the government monitoring collection requirement, since submission of the data collected for monitoring purposes under Fair Housing and Regulation B is not required. The purpose and intent of each law remains in tact.

Reporting, Record Keeping Requirements. The requirement to collect government monitoring information should remain solely with the Home Mortgage Disclosure Act. HMDA data covers all purposes relating to the purchase, refinance, or improvement to a 1-4 family dwelling. For the home improvement purpose, both secured and unsecured loans are subject to the law. This data is filed with the federal agencies, rather than just

collected and maintained as part of the loan file. Examiners rely on HMDA data for fair lending analysis, assessing banks' fair lending practices, and identifying appropriate allocation of public sector funds. For the larger bank, the examiners base their test samples and scope of review on the data submitted on the HMDA LAR.

General Approach, Flexibility. Collection of monitoring information: New classification of ethnicity presents a challenge for all customer contact persons. For Hispanic/Latino applicants, some believe the question is answered by completing the ethnicity category. Still others believe their Hispanic/Latino designation is a race. Asking to identify with an "additional" race has proven difficult. The integrity of the responses for 2004 is now questionable. Phone centers have a higher percentage of "do not wish to furnish" responses.

- Perhaps publishing explanatory definitions for the race and ethnicity categories will provide the necessary guidance for lending institutions to use in attempts to obtain this data.

Over the years, consumer protection advocates believe there is benefit to informing the consumer of all the factors used in making credit decisions. An overlap exists between the ECOA and the FTC's FCRA rules that require disclosure of all relevant factors used to arrive at an adverse credit decision. With the enactment of the FACT ACT, more information must now be communicated not only to applicants, but to existing credit account holders.

Clarity. The requirement to give notice to the account holder for adverse information being reported on their credit profile may not add a benefit to the account holder. The consumer may remain at a disadvantage when merely having the information does not help them understand the action. In addition to the potential of increased legal claims resulting from providing notice of delinquency, lending institutions will have to defend what was a normal course of action on past due accounts. The protection afforded by lending laws is now extending to consumers that do not honor their borrowing agreements. Adding an additional disclosure notice and prescribing another time limit will add to the lender's existing disclosure burdens, and may serve to confuse the consumer.

The comments provided here are intended as a general overview of the issues we face with lending-related compliance rules.

We appreciate the opportunity to offer these comments. Perhaps the information noted here will assist in your efforts to reduce the regulatory burden while we continue to meet the consumer protection requirements of the laws.

Regards,

Roxanne McCain
Vice President
Lending Compliance